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# Closing the Gap Between Legal Education and Market Demand, and Closing it Now

Ellen L. Durkee

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*Closing the Gap Between Legal Education and Market Demand,  
and Closing it Now*  
by  
Ellen L. Durkee

Submitted in partial fulfillment of the requirements of the  
King Scholar Program  
Michigan State University College of Law  
under the direction of  
Professor Renee Newman Knake  
Spring, 2012

## CLOSING THE GAP BETWEEN LEGAL EDUCATION AND MARKET DEMAND, AND CLOSING IT NOW

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### I. INTRODUCTION

As early as 1971, proposals calling for change in the law school curriculum circulated through the legal community.<sup>1</sup> The debate never subsided and the current state of the legal job market adds new fuel to the fire. Law students, young lawyers, and scholars alike air their frustrations in the form of lawsuits, news articles, and blog posts, highlighting current issues

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<sup>1</sup> THOMAS D. MORGAN, *THE VANISHING AMERICAN LAWYER* 197 n.66 (Oxford Univ. Press 2010).

which include massive student debt and dwindling legal jobs.<sup>2</sup> At top ranked law schools, tuition and fees alone top \$52,000 per year for students.<sup>3</sup> In 2010, law students borrowed at least \$3.7 billion to finance their legal educations.<sup>4</sup> In the same year, the 2010 law school graduates faced the worst legal job market since 1996, both in terms of job opportunities and starting salaries.<sup>5</sup> The declining market only added to an already over-saturated market, with more lawyers passing state bar exams than jobs existed for these newly licensed attorneys.<sup>6</sup>

National news publications and politicians also joined the debate. The New York Times ran a series of articles that highly criticized law schools and the American Bar Association (“ABA”).<sup>7</sup> United States Senators wrote a letters to the ABA, urging change on behalf of law students.<sup>8</sup>

The year 2011 ushered in a wave of class action lawsuits filed against law schools, alleging fraudulent reporting of employment and salary data.<sup>9</sup> Frustrated alumni from over fifteen different law schools backed lawsuits asserting claims of fraud, negligent misrepresentation, and deceptive business practices.<sup>10</sup> These claims stated if the law school had accurately reported employment prospects, the plaintiffs might not have chosen to invest in a

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<sup>2</sup> E.g., David Segal, *Is Law School a Losing Game?*, N.Y. TIMES, Jan. 8, 2011, at BU1; Jack Bouboushian and Dave Tarte, *Wave of Class Actions Against Law Schools Over Grad Work Stats*, COURTHOUSE NEWS SERVICE, Feb. 3, 2012, available at <http://www.courthousenews.com/2012/02/03/43614.htm>.

<sup>3</sup> *Best Law Schools*, U.S. NEWS, <http://grad-schools.usnews.rankingsandreviews.com/best-graduate-schools/top-law-schools/law-rankings> (last visited Apr. 2, 2012).

<sup>4</sup> William D. Henderson and Rachel M. Zahorsky, *The Law School Bubble*, ABA JOURNAL, Jan. 2012, at 33.

<sup>5</sup> Press Release, NALP, *Class of 2010 Graduates Faced Worst Job Market Since Mid-1990s: Longstanding Employment Patterns Interrupted* (June 1, 2011), available at <http://www.nalp.org/2010selectedfindingsrelease>; *Trends in Median Reported Salaries*, NALP, [http://www.nalp.org/trends\\_in\\_median\\_reported\\_salaries](http://www.nalp.org/trends_in_median_reported_salaries) (last visited Apr. 8, 2012).

<sup>6</sup> Catherine Rampell, *The Lawyer Surplus State by State*, ECONOMIX (June 27, 2011, 11:00 AM), <http://economix.blogs.nytimes.com/2011/06/27/the-lawyer-surplus-state-by-state/>.

<sup>7</sup> E.g., Segal, *supra* note 2.

<sup>8</sup> Press Release, U.S. Senator Barabara Boxer California, *Boxer Urges American Bar Association to Take Stronger Steps to Protect Law School Students* (Oct. 6, 2011), available at <http://boxer.senate.gov/en/press/releases/100611b.cfm>.

<sup>9</sup> E.g., Amended Complaint, *Gomez-Jiminez v. New York Law School*, No. 652226/2011 (N.Y. Sup. Ct. 2011).

<sup>10</sup> Staci Zaretsky, *Fifteen More Law Schools to be Hit with Class Action Lawsuits Over Post-Grad Employment Rates*, ABOVE THE LAW (Oct. 5, 2011, 2:50 PM), <http://abovethelaw.com/2011/10/fifteen-more-law-schools-to-be-hit-with-class-action-lawsuits-over-post-grad-employment-rates/>.

legal education.<sup>11</sup> Plaintiffs stated because of the declining job market, it might be impossible to pay off the debt incurred to obtain the law degree.<sup>12</sup> The plaintiffs demanded damages in the amount of the difference between the education they paid for, and the true market value of the degree they received.<sup>13</sup> The lawyers behind these lawsuits aimed not only for compensation for their clients, but for a broader goal of legal education reform as well.<sup>14</sup>

These suits together with the national media attention brought to light the serious gap between today's legal education and the reality of the legal market. The time has come for immediate changes to law school curriculum so graduates will be prepared to offer valuable and necessary services within a changing legal market. Part II of this note reviews the recent lawsuits filed against law schools, which have accelerated the debate over legal education. Part III identifies major challenges the legal education system faces as it continues to graduate would-be attorneys. Part IV proposes basic changes to the education system that should be implemented while larger-scale changes are considered. Part V concludes immediate change is necessary to prepare current and recently admitted law students for careers in today's legal market.

## II. LAW SCHOOL LAW SUITS

The first of the class action lawsuits alleging fraudulent and misleading employment data reporting were filed against New York Law School ("NYLS") and Thomas M. Cooley Law School ("Cooley").<sup>15</sup> Since the time of those filings in August 2011, an additional fifteen law

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<sup>11</sup> Class Action Complaint, *Gomez-Jiminez v. New York Law School*, No. 652226/2011 (N.Y. Sup. Ct. 2012) [hereinafter *Gomez Complaint*].

<sup>12</sup> Staci Zaretsky, *Cooley and NYLS Hit with Class Action Law Suits*, ABOVE THE LAW (Aug. 10, 2011, 3:20 PM), <http://abovethelaw.com/2011/08/cooley-law-gets-served-some-of-its-own-medicine-nyls-is-tardy-to-the-party/>.

<sup>13</sup> *Gomez Complaint*, *supra* note 11.

<sup>14</sup> Zaretsky, *supra* note 12.

<sup>15</sup> *Gomez Complaint*, *supra* note 11; Class Action Complaint, *Macdonald v. Thomas M. Cooley Law School*, No. 11-CV-00831 (W.D. Mich. filed Aug. 10, 2011) [hereinafter *Cooley Complaint*]. This paper will focus solely on the cases against NYLS and Cooley.

schools were served similar complaints.<sup>16</sup> The complaints focus on a lack of transparency in reporting data, specifically employment percentages and salary rates of graduates.<sup>17</sup> The complaints contained similar general causes of action: fraud; negligent misrepresentation; and deceptive business practices under the applicable state statutes.<sup>18</sup>

More importantly than the stated claims, these complaints are evidence of a larger issue in legal education – the current education system is not meeting the demands of the legal market. The actual numbers reported by law schools have only become an issue because students are not finding the same job opportunities once enjoyed by past law school graduates. Three years worth of time and thousands of dollars leaves students unequipped to meet the demands of the legal market.

a. The Defendants: New York Law School and Thomas M. Cooley Law School

New York Law School, located in New York City, is a private law school with an enrollment of approximately 1,750 students.<sup>19</sup> The cost of tuition and fees is \$47,800 per year, with a projected total cost of attendance ranging between \$58,274 (living with family) and \$71,123 (living on-own).<sup>20</sup> The school website boasts core values of innovation, integrity, professionalism, and the advancement of justice.<sup>21</sup> In terms of employment, the Career Services section states the commitment to increasing career opportunities for students and graduates, and notes, “The employment statistics of our graduates reflect the versatility of their career planning, as they find satisfying positions even as legal employment opportunities shift in response to

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<sup>16</sup> Zaretsky, *supra* note 10.

<sup>17</sup> *Gomez Complaint*, *supra* note 11, at 2-3.

<sup>18</sup> *Id.* at 6.

<sup>19</sup> *Fact Sheet*, NEW YORK LAW SCHOOL, [http://www.nyls.edu/about\\_the\\_school/mission\\_and\\_history/fact\\_sheet](http://www.nyls.edu/about_the_school/mission_and_history/fact_sheet) (last visited Apr. 8, 2012).

<sup>20</sup> *Tuition and Financial Aid*, NEW YORK LAW SCHOOL, [http://www.nyls.edu/prospective\\_students/tuition\\_and\\_financial\\_aid](http://www.nyls.edu/prospective_students/tuition_and_financial_aid) (last visited Apr. 8, 2012).

<sup>21</sup> *Our History, Program, and Faculty, Our Core Values*, NEW YORK LAW SCHOOL, [http://www.nyls.edu/prospective\\_students/all\\_about\\_nyls/our\\_history\\_program\\_and\\_faculty](http://www.nyls.edu/prospective_students/all_about_nyls/our_history_program_and_faculty), *Our Core Values* (last visited Apr. 8, 2012).

economic forces.”<sup>22</sup> Employment statistics along with Employment FAQs are available in pdf documents on the website, which discuss the poor market, the reporting method of the data, and the job search assistance available from NYLS. These documents were updated after the lawsuit was filed.<sup>23</sup>

Thomas M. Cooley Law School, a private school, is the largest law school in the United States, with over 3,700 current full and part-time students.<sup>24</sup> The cost of tuition and fees is \$36,790 for two semesters, with a total projected cost of attendance of \$51,476 per year, and an additional \$1,000 one-time computer cost for incoming students.<sup>25</sup> The school boasts rigorous programs, large facilities, and experienced faculty as reasons to choose Cooley.<sup>26</sup> The Career Services webpage states, “We work hard to provide current and relevant resources that will assist you in setting and reaching your professional goals.” The school also runs “Cooley Classifieds,” a website for students and alumni, which is updated every Friday with job opportunities and other information.<sup>27</sup>

#### b. The Allegations: Fraud, Negligent Misrepresentation, and Deceptive Business Practices

In the complaints, alumni of NYLS and Cooley, who were frustrated with the job opportunities, or lack thereof, post-graduation, asserted the reported employment statistics of

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<sup>22</sup> *Employment, Career Services*, NEW YORK LAW SCHOOL, [http://www.nyls.edu/prospective\\_students/student\\_life/career\\_services](http://www.nyls.edu/prospective_students/student_life/career_services) (last visited Apr. 8, 2012).

<sup>23</sup> *Employment Statistics*, NEW YORK LAW SCHOOL, [http://www.nyls.edu/prospective\\_students/student\\_life/career\\_services](http://www.nyls.edu/prospective_students/student_life/career_services) (last visited Apr. 8, 2012); *Employment FAQs*, NEW YORK LAW SCHOOL, [http://www.nyls.edu/prospective\\_students/student\\_life/career\\_services](http://www.nyls.edu/prospective_students/student_life/career_services) (last visited Apr. 8, 2012).

<sup>24</sup> *Thomas M. Cooley Law School Overview*, THOMAS M. COOLEY LAW SCHOOL, <http://www.cooley.edu/overview/> (last visited Apr. 8, 2012).

<sup>25</sup> *Estimated Academic Expenses 2011-12*, THOMAS M. COOLEY LAW SCHOOL, [http://www.cooley.edu/finaid/tuition\\_incoming.html](http://www.cooley.edu/finaid/tuition_incoming.html) (last visited Apr. 8, 2012).

<sup>26</sup> *Why Cooley is Right For You*, THOMAS M. COOLEY LAW SCHOOL, <http://www.cooley.edu/prospective/why.html> (last visited Apr. 8, 2012).

<sup>27</sup> *Career and Professional Development for Students*, THOMAS M. COOLEY LAW SCHOOL, <http://www.cooley.edu/career/students.html> (last visited Apr. 8, 2012); *Career and Professional Development for Alumni*, THOMAS M. COOLEY LAW SCHOOL, <http://www.cooley.edu/career/alumni.html> (last visited Apr. 8, 2012).

these schools did not accurately reflect actual legal employment status of graduates.<sup>28</sup> They challenged both the reported number of employed graduates, as well as the reported salary of these graduates.<sup>29</sup> The complaint contained numerous statistics criticizing the legal education system, including the heavy debt load, the over-saturation of the legal market, and the historically weak job market.<sup>30</sup>

The complaints alleged employment and salary data were material to the plaintiffs' decisions to enter each specific law school.<sup>31</sup> Plaintiffs stated they justifiably relied on the data directly reported by the law school, as well as the data reported to the ABA and U.S. News.<sup>32</sup> Plaintiffs stated they were ignorant to the "true facts" that few graduates actually secured gainful employment post-graduation.<sup>33</sup> The complaints asserted the alleged deceptions "are all the more shocking considering they are being perpetuated on naïve, relatively unsophisticated consumers – many of whom are barely removed from college – who are often making their first 'big-ticket' purchase."<sup>34</sup>

### c. The Outcome

The New York Supreme Court recently dismissed the case against NYLS, rejecting the argument that the plaintiffs were unsophisticated buyers.<sup>35</sup> The court rejected all three claims, finding the plaintiffs' reliance on the alleged false and misleading data was not reasonable, and the representations were not likely to mislead a reasonable consumer acting reasonably.<sup>36</sup> The court noted a reasonable consumer does not mean a sophisticated consumer, but that "[b]y

<sup>28</sup> *E.g.*, *Gomez Complaint*, *supra* note 11, at 2-3.

<sup>29</sup> *Id.*

<sup>30</sup> *Cooley Complaint*, *supra* note 15, at 19.

<sup>31</sup> *Id.* at 35, 90.

<sup>32</sup> *Id.* at 35, 90, 40, 107.

<sup>33</sup> *Id.* at 38, 101.

<sup>34</sup> *Id.* at 3, 6.

<sup>35</sup> Decision and Order, *Gomez-Jiminez v. New York Law School*, No. 652226/2011 (N.Y. Sup. Ct. Mar. 21, 2012), available at <http://iapps.courts.state.ny.us/iscroll/SQLData.jsp?IndexNo=652226-2011>.

<sup>36</sup> Decision and Order, *supra* note 35, at 17, 28-29.



anyone’s definition, reasonable consumers – college graduates – seriously considering law schools are a sophisticated subset of education consumers, capable of sifting through data and weighing alternatives before making a decision regarding their post-college options.”<sup>37</sup> The court emphasized numerous sources of information that were available for the plaintiffs to review prior to making a decision, including the number of alternate sources attached as exhibits to the plaintiffs’ Complaint.<sup>38</sup> “[T]he reasonable consumer of legal education must realize that these omnipresent realities of the market obviously trump any allegedly overly optimistic claims in their law school’s marketing materials.”<sup>39</sup> The plaintiffs’ “frustration and disappointed expectations do not of themselves give rise to a cognizable cause of action.”<sup>40</sup>

The dismissal, however, did not come without recognition of the dire state of the legal market. The court stated recent law graduates are dealing with “the effects of the most severe contraction in demand for legal services that this court can recall since the early 1970s.”<sup>41</sup> The court noted a great number of lawyers now work without pay; law firms are splitting apart; new billing arrangements are affecting money coming in the doors to firms; issues that will be present for the foreseeable future.<sup>42</sup> The court anticipates market forces will begin to correct the surplus of lawyers. For the present time, the court hopes the attention generated by these lawsuits will cause law schools and the legal industry as a whole, to seriously address the issues applicants and students face in the changed and challenging legal environment.<sup>43</sup>

The court correctly recognized a deeper issue exists. There is a disconnect between legal education and market demand. If law schools were training students to meet the needs of the

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<sup>37</sup> *Id.* at 12, 17.

<sup>38</sup> *Id.* at 12. The court noted data available from the ABA, U.S. News, and NALP specifically, as well as the plethora of information that discussed the effect of the recession on the legal job market. *Id.*

<sup>39</sup> *Id.* at 24.

<sup>40</sup> Decision and Order, *supra* note 35, at 24.

<sup>41</sup> *Id.* at 30.

<sup>42</sup> *Id.* at 30-31.

<sup>43</sup> *Id.* at 33.

legal market, would employment data reporting be so (allegedly) deceptive? If law students cannot find jobs, law schools run the risk of going out of business. So, to keep money coming in the door, employment data is reported in the most favorable light possible. Instead, law schools should focus on the underlying issues facing the legal market, and implement valuable solutions to help students.

### III. CHALLENGES FACING LAW SCHOOLS & STUDENTS TODAY

The law school lawsuits led to numerous news articles and reports calling for greater transparency and accountability in reporting data.<sup>44</sup> False or misleading data, put forth by institutions teaching soon-to-be lawyers the importance of candor and truthfulness<sup>45</sup> is, without a doubt, an important concern. However, data reporting is the least of the challenges facing law schools today.

The real challenges ahead for legal education are nearly overwhelming. The United States is in the middle of the worst economic recession in decades. Tuition rates continue to increase, saddling graduating students with debt loads averaging \$75, 700 at public schools, and topping \$125,000 at private schools.<sup>46</sup> Advances in technology dissolved entry-level legal services jobs and created a market demand for better, faster, and cheaper legal advice.<sup>47</sup> A global shift towards a more deregulated legal profession created more opportunities for foreign lawyers to meet these new demands for faster and cheaper legal services.<sup>48</sup> The upcoming generation of lawyers expects an education that will solve these issues and leave them ready to succeed in the legal

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<sup>44</sup> Julie Margetta Morgan, *What Can We Learn from Law School?*, CENTER FOR AMERICAN PROGRESS (Dec. 2011), available at [http://www.americanprogress.org/issues/2011/12/legal\\_education.html](http://www.americanprogress.org/issues/2011/12/legal_education.html).

<sup>45</sup> See MODEL RULES OF PROF'L CONDUCT R. 3.3, 4.1 (2010).

<sup>46</sup> Debra Cassens Weiss, *Average Debt Load of Private Law School Grads is \$125k; It's Highest at These Five Schools*, ABA JOURNAL (Mar. 28, 2012), [http://www.abajournal.com/news/article/average\\_debt\\_load\\_of\\_private\\_law\\_grads\\_is\\_125k\\_these\\_five\\_schools\\_lead\\_to\\_m](http://www.abajournal.com/news/article/average_debt_load_of_private_law_grads_is_125k_these_five_schools_lead_to_m).

<sup>47</sup> Farhad Manjoo, *Legal Software: Automation Could Kill Lawyers. Why that's Good for Everyone Else*, SLATE (Sept. 29, 2011, 2:42 AM), [http://www.slate.com/articles/technology/robot\\_invasion/2011/09/will\\_robots\\_steal\\_your\\_job\\_5.html](http://www.slate.com/articles/technology/robot_invasion/2011/09/will_robots_steal_your_job_5.html).

<sup>48</sup> E.g., Legal Services Act, 2007, c. 29 (U.K.).

market immediately upon graduation. Overarching all of this is the sheer uncertainty of where the market is headed.

a. An Economic Recession

The depressed state of the national economy is not news. Overall unemployment rates reached 9.9% in December 2009<sup>49</sup>, with more than 3,000 lawyers being laid-off.<sup>50</sup> While the unemployment numbers are beginning to decrease, 8.2% as of March 2012,<sup>51</sup> job opportunities are still at a minimum. The Association for Legal Career Professionals (“NALP”) reported only 68.4% of 2010 graduates were employed in a job that required bar passage, and only 87.6% were employed in any capacity, nine-months after graduation.<sup>52</sup> James Leipold, NALP Executive Director, stated:

The tail of the 'Great Recession' is long and there are few bright spots in the employment profile for the Class of 2010.... Most of the structural weaknesses in the job market faced by the Class of 2009 intensified for the Class of 2010, and new high- and low-water statistical marks have been set. And, in most cases, the changes that have occurred over two years' time, from 2008 to 2010, are the most dramatic.<sup>53</sup>

On average, law students graduate with a higher debt load than all other graduate students, with the exception of medical students.<sup>54</sup> Students enter law school with undergraduate debt, and leave law school with a total debt load greater than the average starting salary.

Students entering law school are not naive to the low numbers of available job opportunities, but many believe within the three years it takes to obtain a law degree, the market

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<sup>49</sup> *Databases, Tables & Calculators by Subject, Labor Force Statistics from the Current Population Survey*, U.S. DEPT. OF LABOR BUREAU OF LABOR STATISTICS (Apr. 22, 2012, 10:56 AM), <http://data.bls.gov/timeseries/LNS14000000>.

<sup>50</sup> *Now Even Lawyers Getting Axed*, ASSOCIATED PRESS (Apr. 13, 2009, 5:18 PM), <http://www.msnbc.msn.com/id/30196250/#.T38kuY6fBmI>.

<sup>51</sup> *Databases, Tables & Calculators by Subject*, *supra* note 49.

<sup>52</sup> *Class of 2010 Graduates Faced Worst Job Market Since Mid-1990s*, *supra* note 5.

<sup>53</sup> *Id.*

<sup>54</sup> *Student Loans*, FINAID!, <http://www.finaid.org/loans/> (last visited Apr. 22, 2012).

will bounce back.<sup>55</sup> NALP reported both associate hiring and lateral hiring has begun to show consistent signs of improvement.<sup>56</sup> Even with this improvement, nearly every state has a “lawyer surplus,” with far more attorneys passing the bar exam than jobs are available.<sup>57</sup> In 2009, 9,787 test-takers passed the New York State bar exam; in the same year, analysts predicted the state would only need 2,100 new lawyers, leaving 7,687 new lawyers without jobs requiring a license.<sup>58</sup>

The predicted numbers of new lawyers needed in New York is evidence of a larger issue. Even if entry-level legal jobs continue to come back, it is unlikely these jobs will return to the pre-recession levels. Changes in technology, and globalization are reducing the number of entry-level positions available and changing the landscape of the legal job market.

#### b. A New Market

Though the recession caused a dramatic loss of many legal jobs, evidence of declining law firm employment opportunities existed even before the big hit of 2009. Between 2004 and 2008, almost 20,000 traditional firm jobs were cut.<sup>59</sup> Large firms that traditionally offered new lawyers the best starting salaries were taking the hardest hits.<sup>60</sup> The declining number of jobs was not because of a decreased need for legal services, but rather an increased demand for faster,

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<sup>55</sup> See Gerry Shih, *Downturn Dims Prospects Even at Top Law Schools*, N.Y. TIMES, Aug. 25, 2009, at B1.

<sup>56</sup> Press Release, NALP, Recruiting for Entry-Level Lawyers Edges Up Slightly (Mar. 16, 2011), *available at* [http://www.nalp.org/march11\\_pr\\_entrylevelrecruiting](http://www.nalp.org/march11_pr_entrylevelrecruiting); *Lateral Hiring Up for the Second Year in a Row*, NALP BULLETIN (Apr. 2012), *available at* <http://www.nalp.org/0412research>.

<sup>57</sup> Rampell, *supra* note 6.

<sup>58</sup> *Id.*

<sup>59</sup> William D. Henderson and Rachel M. Zahorsky, *Law Job Stagnation May Have Started Before the Recession – And it May Be a Sign of Lasting Change*, ABA JOURNAL (July 1, 2011, 4:40 AM), [http://www.abajournal.com/magazine/article/paradigm\\_shift/](http://www.abajournal.com/magazine/article/paradigm_shift/).

<sup>60</sup> Henderson & Zahorsky, *supra* note 59; Larry Ribstein, *The Death of Big Law*, 2010 WISC. L. REV. 749 (2010). Clients have the luxury of a multitude of sophisticated lawyers to choose from, which leaves clients free to negotiate competitive prices. Competitive pricing means less money coming through the doors of law firms and, in turn, less money available to train young attorneys. Training is now a cost law firms are unwilling to take on. Spending time and money to train a new attorney causes a loss of time available to bill clients who are already paying at discounted rates. Clients also prefer more experienced attorneys and are unwilling to pay for services of a lawyer who is learning as she goes. The cost of training and demands of the clients leave new attorneys with no home at big firms.

cheaper, and globally relevant services.<sup>61</sup> The quick and easy availability of information to clients increases the burden on lawyers to offer some other service a client needs, and thus, is willing to pay for. Technology brings unlimited information to the clients' fingertips with a quick click of the mouse. Lawyers must keep up with the "self-diagnosing" client by providing a service that is not available through internet or software products.

Changes in technology also serve to make the world a smaller place. More companies than ever before are conducting business worldwide. This creates a need for lawyers who are comfortable navigating foreign law in order to provide prompt and accurate advice, and well-drafted legal documents. Yet changes in professional regulations for lawyers in key foreign countries leave American lawyers at a disadvantage.<sup>62</sup> Foreign lawyers now have more freedom to raise capital and offer services through unique mediums, increasing their competitive edge in the global market.<sup>63</sup>

#### i. *Changing Technology*

Technology is encroaching on the legal market from all sides. Google offers legal information at the click of a mouse. The ABA recommends billing software be utilized by all law firms.<sup>64</sup> Social media offers a huge body of evidence during litigation.<sup>65</sup> On-line legal research providers continue to hone their search engines to offer better research faster.<sup>66</sup> Dotcoms are offering basic legal services at discount prices.<sup>67</sup> Applications now allow clients to access

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<sup>61</sup> Henderson & Zahorsky, *supra* note 59. The GDP for legal services has increased over the past 25 years to just under 2% of the nation's GDP, with no signs of decline. *Id.*

<sup>62</sup> *E.g.*, Legal Services Act, 2007, c. 29 (U.K.).

<sup>63</sup> *Id.*

<sup>64</sup> *Time and Billing Software: Comparison Chart*, AMERICAN BAR ASSOCIATION, [http://www.americanbar.org/groups/departments\\_offices/legal\\_technology\\_resources/resources/charts\\_fyis/timeandbilling.html](http://www.americanbar.org/groups/departments_offices/legal_technology_resources/resources/charts_fyis/timeandbilling.html) (last visited Apr. 8, 2012).

<sup>65</sup> *Sample Discovery Requests: Facebook and Social Media*, SOCIAL MEDIA, ESQ., <http://www.socialmediaesq.com/2011/10/19/sample-discovery-requests-facebook-and-social-media/> (last visited Apr. 8, 2012).

<sup>66</sup> Lexis now offers Lexis Advance, and Westlaw offers Westlaw Next.

<sup>67</sup> *See generally* LEGAL ZOOM, <http://www.legalzoom.com> (last visited Apr. 22, 2012).

information regarding reasonable rates for legal services.<sup>68</sup> Today's lawyer needs to adapt to these changes or risk being pushed out of the market.

Technological challenges impact law schools directly as well. Undergraduate programs often offer on-line courses, and more and more teaching services are available on-line, and free of charge.<sup>69</sup> Law schools have strict attendance policies, requiring a certain amount of "in class" minutes, and rarely offer courses on-line.<sup>70</sup> In order to teach students to deal with new technology in practice, law schools must also adapt to weave technology into legal education.<sup>71</sup>

### 1. The Information Age

Clients of the past did not have easy access to legal information except through the use of an attorney. Libraries were open to the public, but deciphering cases and complex statutes was more than most people would consider doing. Now, the internet offers easier-to-understand legal information in seconds through informal websites, such as blogs, and formal websites, like Legal Zoom. Lawyers today need to be prepared to handle a client already armed with basic information available on the web.

A simple search using Google returns to the user any number of possible sources of legal advice and information. Running the search, "How do I make a will," returns a list of frequently asked questions, a "how-to," and on-line sites offering free templates.<sup>72</sup> By adding "for free" to

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<sup>68</sup> TYMETRIX 360°, <http://www.tymetrix.com/products/t360/1/cost-management/> (last visited Apr. 22, 2012).

<sup>69</sup> See generally KAHN ACADEMY, <http://www.khanacademy.org/> (last visited Apr. 8, 2012).

<sup>70</sup> *2011-2012 Standards and Rules of Procedure for Approval of Law Schools*, AMERICAN BAR ASSOCIATION (2011), available at [http://www.americanbar.org/groups/legal\\_education/resources/standards.html](http://www.americanbar.org/groups/legal_education/resources/standards.html).

<sup>71</sup> Technology in education is more than requiring laptops so that students may take tests on exam software.

<sup>72</sup> *Making a Will FAQs*, FINDLAW, <http://estate.findlaw.com/wills/making-a-will-faqs.html> (last visited Apr. 8, 2012); *How to Write Your Own Last Will and Testament*, WIKIHOW, <http://www.wikihow.com/Write-Your-Own-Last-Will-and-Testament> (last visited Apr. 8, 2012).

the search, a link to a YouTube video appears.<sup>73</sup> The advice may not always be legally sound or ethically provided, but it certainly supplies a significant amount of information.

More formally, Legal Zoom sells a legal product with 100% satisfaction guarantee.<sup>74</sup> The website offers legal forms for over fifty different legal transactions at affordable prices.<sup>75</sup> In fifteen minutes for \$69, a Legal Zoom user can create a Last Will and Testament, which includes a \$50,000 guarantee.<sup>76</sup> Users in some states can also purchase up to thirty days access to attorney assistance to answer any remaining questions or concerns.<sup>77</sup> In a tough economy, with clients unafraid to negotiate competitive prices, Legal Zoom is meeting the demand for faster and cheaper delivery of legal services.

Both the formal and informal websites pose challenges for lawyers. First, if a client can receive information for free, that client is certainly not going to pay a lawyer to reproduce the same information. Second, if a client can draft legal documents from the comfort of his home for a cheap price, that client is not going to schedule an appointment with a lawyer and take on at least double the cost for essentially the same service. Lawyers will need to learn to work with and among on-line service providers in order to capture what remains of the traditional legal market.

Legal scholars anticipate these commodity-style legal services products will only continue to grow.<sup>78</sup> These products may include standard form contracts, automated legal advice,

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<sup>73</sup> *Legal Information: How to Make a Will for Free*, YOUTUBE, [http://www.youtube.com/watch?v=G\\_cvR2lpUjw](http://www.youtube.com/watch?v=G_cvR2lpUjw) (last visited Apr. 8, 2012).

<sup>74</sup> *Last Will & Testament*, LEGALZOOM, <https://www.legalzoom.com/sem/last-will-and-testament.html> (last visited Apr. 8, 2012). Other websites now offer similar products. *E.g.*, ROCKET LAWYER, <http://www.rocketlawyer.com/> (last visited Apr. 8, 2012).

<sup>75</sup> *Legal Forms*, LEGALZOOM, <https://www.legalzoom.com/legalforms/home.html> (last visited Apr. 8, 2012).

<sup>76</sup> *Last Will & Testament*, *supra* note 74.

<sup>77</sup> *Id.*

<sup>78</sup> RICHARD SUSSKIND, *THE END OF LAWYERS?* (Oxford Univ. Press 2010); Bruce Kobayashi and Larry E. Ribstein, *Law's Information Revolution*, 53 ARIZONA L. REV. 1169, 1171-72 (2011).

or data processing and outcome prediction.<sup>79</sup> Increasing products also means a need for manufacturers and capital.<sup>80</sup> Capital in particular poses a significant obstacle. Regulatory schemes have not adapted to the changing demands of the market.<sup>81</sup> Intellectual property rights do not yet fully cover the panoply of legal information offered.<sup>82</sup> Lawyers will need to be prepared to handle legal products based on the current law, to call for reform when necessary, and to adapt to the market as regulatory changes occur. Law schools will need to prepare students for these tasks.<sup>83</sup>

## 2. Automation of Law Practice

Will robots steal legal jobs? Not exactly, but software might.<sup>84</sup> Access to vast amounts of electronic data opens the door for technologists to create software programs capable of basic analytical reasoning, efficient document review, and simple drafting services.<sup>85</sup> These programs replace the need for traditional entry-level attorneys and support staff, and drive the need for legally trained professionals who can use and interpret the software output to better serve clients.

E-discovery software programs are becoming more common, displacing work historically completed by new lawyers. These programs sift through massive amounts of electronically stored information (“ESI”), such as e-mails, electronic documents, databases, and websites, to hone in on key evidence to be used during the course of litigation, or otherwise.<sup>86</sup> These software programs initially began as a glorified “Control + F” feature traditionally used in a word processing program, but evolved into programs that can identify patterns of behavior which also

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<sup>79</sup> Kobayashi & Ribstein, *supra* note 78, at 1192 -1207.

<sup>80</sup> *Id.* at 1207-17.

<sup>81</sup> *Id.* at 1185-92 (Part II discussing professional regulation of legal products).

<sup>82</sup> *Id.* at 1173-85 (Part I discussing intellectual property law and its application to legal products).

<sup>83</sup> *Id.* at 1219.

<sup>84</sup> Manjoo, *supra* note 47.

<sup>85</sup> *Id.*

<sup>86</sup> *eDiscovery Software for Investigations*, CLEARWELL, <http://www.clearwellsystems.com/electronic-discovery-solutions/e-discovery-software.php> (last visited Apr. 8, 2012).



may be extremely relevant as evidence.<sup>87</sup> Law firms that used to send associates to sift through warehouses full of discovery documents now find e-discovery software to be faster, cheaper, and just as accurate.<sup>88</sup>

Other software programs are able to troll through massive amounts of data to predict the likely outcome of a lawsuit. The Stanford IP Litigation Clearinghouse, a collaboration of the Stanford Program in Law, Science and Technology and the Stanford Department of Computer Science, developed the first successful database to do just that.<sup>89</sup> Now marketed as Lex Machina, Inc., this database houses information from more than 100,000 intellectual property law cases and allows users to uncover patterns of awards and case outcomes in different geographic regions across the country.<sup>90</sup> Lawyers were once limited to their own experience and their own speed in reading cases. Now, through the use of this software, lawyers are able to quickly and accurately predict results for their clients using data from thousands of cases.<sup>91</sup> Other similar databases are in the development stages with plans to bring this type of widespread outcome prediction to all areas of litigation.

Software programs can also draft contracts and other basic legal documents. Somewhat similar to TurboTax<sup>92</sup>, these programs are able to build basic documents through branching logic and the user's answers to certain questions.<sup>93</sup> From contracts to business start-up documents, these software programs cut down on the time it takes for a lawyer to produce the documents, as

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<sup>87</sup> Manjoo, *supra* note 47.

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*; Stanford IP Litigation Clearinghouse, STANFORD LAW SCHOOL, <http://www.law.stanford.edu/program/centers/iplc/#overview> (last visited Apr. 22, 2012).

<sup>91</sup> Manjoo, *supra* note 47.

<sup>92</sup> TurboTax is a home software program that walks users through simple steps to complete a tax return. TURBOTAX, <http://turbotax.intuit.com/> (last visited Apr. 8, 2012).

<sup>93</sup> Manjoo, *supra* note 47.

well as the end cost to the client.<sup>94</sup> These automated programs are changing the way legal services are delivered. If quality remains the same, but cost and time are reduced, the introduction of these programs is of great benefit to consumers. However, new lawyers see their jobs disappear to software programs, and older lawyers struggle to implement unfamiliar technology into their practice. Law schools will need to consider course offerings that train students to not only use this technology, but how to use this technology to their benefit. Robots may steal some jobs, but there is still a place in the market for attorneys. The jobs simply require additional skills.

## ii. *Globalization*

As technology improves, the world becomes a smaller place. Clients are doing more and more business overseas, and American lawyers will need to be ready to respond to issues of foreign law.<sup>95</sup> American lawyers also must deal with outsourced legal work to lawyers in other countries who are able to do the same work at lower costs.<sup>96</sup> Moreover, foreign lawyers now benefit from relaxed regulations that allow for more creative delivery methods and access to greater financial capital.<sup>97</sup>

As companies expand business overseas, more legal issues will involve questions of foreign law.<sup>98</sup> Lawyers without global networks may struggle to quickly and accurately answer questions on issues that deal with foreign law, such as tax implications of the sale of a product in Japan, or employee benefits required by the European Union. Law schools do offer comparative

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<sup>94</sup> *Id.*

<sup>95</sup> Henderson & Zahorsky, *supra* note 59.

<sup>96</sup> Rama Lakshmi, *U.S. Legal Work Booms in India*, THE WASHINGTON POST FOREIGN SERVICE, May 11, 2008, <http://www.washingtonpost.com/wp-dyn/content/article/2008/05/10/AR2008051002355.html>. There are signs, however, that more outsourced legal work will stay in the U.S. Heather Timmons, *Where Lawyers Find Work*, N.Y. TIMES, June 3, 2011, at B1.

<sup>97</sup> Legal Services Act, 2007, c. 29 (U.K.).

<sup>98</sup> See Susan L. DeJarnatt and Mark C. Rahdert, *Preparing for Globalized Law Practice: The Need to Include International and Comparative Law in the Legal Writing Curriculum* (Apr. 6, 2010), available at <http://ssrn.com/abstract=1586005>.

law classes and study abroad programs, but the main focus of legal education is domestic legal practice.<sup>99</sup> Law schools will need to find a better balance between domestic and foreign law in order to prepare students to face a global legal market.

An American lawyer's inexperience with foreign law is a more glaring problem in light of foreign lawyers' experience with U.S. law. Many companies and law firms discovered foreign lawyers are able to produce the same quality legal work as American lawyers at a much lower cost.<sup>100</sup> India has become a hub for outsourced legal work, with Indian lawyers completing document review, contract drafting, and legal research.<sup>101</sup> Legal outsourcing companies<sup>102</sup> are now thriving, with 79,000 legal jobs expected to be outsourced by 2015.<sup>103</sup>

Foreign lawyers also experienced a relaxation of the professional rules governing lawyers. In the United Kingdom, the Legal Services Act of 2007<sup>104</sup> lifted restrictions on outside investment, allowing for the formation of "Alternative Business Structures" ("ABS"). ABS allows lawyers and non-lawyers to invest together, providing more capital to better develop and better deliver legal services to consumers.<sup>105</sup> Quality Solicitors, a legal services comparison to the U.S. tax preparation chain H&R Block, is already operating in 350 locations within the U.K., offering cheap, prompt, and quality legal advice, even on a Saturday.<sup>106</sup> In Australia, a law firm made a public offering of its stock, permissible under the Legal Profession Act of 2004, greatly

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<sup>99</sup> Adelaide Ferguson, *Mapping Study Abroad in U.S. Law Schools*, NAFSA (May 23, 2010), available at <http://nafsa.org/resourcelibrary/default.aspx?id=20438>.

<sup>100</sup> Lakshmi, *supra* note 95.

<sup>101</sup> Debra Cassens Weiss, *Indian Lawyers Handling Outsourced Work do More than Document Review*, ABA JOURNAL (May 12, 2008), [http://www.abajournal.com/news/article/indian\\_lawyers\\_handling\\_outsourced\\_work\\_do\\_more\\_than\\_document\\_review/](http://www.abajournal.com/news/article/indian_lawyers_handling_outsourced_work_do_more_than_document_review/).

<sup>102</sup> E.g., ATLAS LEGAL RESEARCH, <http://www.atlaslegal.com/> (last visited Apr. 22, 2012).

<sup>103</sup> Suzanne Barlyn, *Call My Lawyer . . . In India*, TIME, Apr. 3, 2008, available at <http://www.time.com/time/magazine/article/0,9171,1727726,00.html?imw=Y>.

<sup>104</sup> Legal Services Act, 2007, c. 29 (U.K.).

<sup>105</sup> *Id.*; KPO Consultants, *U.K. Legal Services Act Opens Doors for Supermarkets, Banks, Other Non-Law Corporations to Own, Manage Law Firms*, GLOBAL LPO CONFERENCE (Feb. 26, 2011), <http://www.globalpoconference.com/uk/component/lyftenbloggie/2011/02/26/23-uk-legal-services-act-opens-doors-for-supermarkets-banks-other-non-law-corporations-to-own-manage-law-firms-.html>.

<sup>106</sup> *About Us*, QUALITY SOLICITORS, <http://www.qualitysolicitors.com/about/> (last visited Apr. 8, 2012).

increasing its access to capital.<sup>107</sup> Deregulation in foreign countries leaves foreign lawyers with greater access to capital, and, thus, more free to offer reasonably priced legal services.

### c. Expectations of a New Generation

Law schools are also not ready to deal with Generation Y students. Generation Y, also called the Millennials, is comprised of persons born between the years 1980 and 1995.<sup>108</sup> The Millennials are known to be technology-based multi-taskers, with high-expectations, and a desire for constant praise.<sup>109</sup> Steeped in tradition, and unchanged for decades,<sup>110</sup> law schools are only beginning to understand the demand for change by the new generation. The law school lawsuits are one such example. Law schools reported strong employment statistics. Confident Millennials picked schools, each assuming, ‘It won’t be me who doesn’t find a job!’ Now, Millennials who did not find jobs are striking back with these lawsuits, demonstrating their unwillingness to settle for an outdated education.

### i. *Exceptionalism*

Millennials also tend to be exceptionalists.<sup>111</sup> Law student exceptionalism is not new, but the stakes are higher. In early cases of exceptionalism, students who had always been at the top of the class, found themselves disappointed, with average grades in the middle of the class. Now, students read about the state of the legal job market, but continue to think, “It won’t be me.” This exceptionalism mentality leaves students unemployed and deep in debt after graduation – a situation they are truly shocked to experience. Law schools could provide all the data in the

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<sup>107</sup> Larry Ribstein, *Practicing Theory: Legal Education for the 21<sup>st</sup> Century*, 96 IOWA L. REV. 1649, 1662 (2011).

<sup>108</sup> Carey Bertolet, *OMG Can We Take it Easy on the Millennials? There’s a New Generation of Lawyers; Please Remain Calm*, BCG SEARCH, <http://www.bcgsearch.com/article/60314/OMG-Can-We-Take-It-Easy-on-the-Millennials-There-s-a-New-Generation-of-Lawyers-Please-Remain-Calm/> (last visited Apr. 8, 2012).

<sup>109</sup> Sally Kane, *Generation Y*, ABOUT.COM, <http://legalcareers.about.com/od/practicetips/a/GenerationY.htm> (last visited Apr. 8, 2012).

<sup>110</sup> See generally MORGAN, *supra* note 1.

<sup>111</sup> Exceptionalism is the condition of being different from the norm. *Exceptionalism*, MERRIAM-WEBSTER, <http://www.merriam-webster.com/dictionary/exceptionalism> (last visited Apr. 8, 2012).

world, but unless students understand they are not likely to be the exception, they will not be satisfied with their legal education.

ii. *Changing career goals*

Millenials also seek a good work-life balance.<sup>112</sup> Law school graduates used to take on jobs at firms, working long hours, as a badge of pride. Today, graduates, although willing to get the work done, are unwilling to sacrifice their social life in the same way. Instant messaging and text messages provide Millenials with a constant stream of communication most find difficult to live without.

Thus, the traditional one-size-fits-all legal education will not satisfy the Generation Y lawyers.<sup>113</sup> Students attend law school for reasons other than becoming a lawyer. With traditional law firm jobs waning, law schools should be thankful for this. However, offering only a traditional legal education will not satisfy these “alternative” law students because they will not be prepared for practice in non-traditional legal careers.

d. Uncertainty

Perhaps the biggest challenge is that of uncertainty.<sup>114</sup> The traditional jobs are gone and the market is dramatically changing. These issues are growing larger in the stormy law school sky, but when will they stop? Journalist, legal scholar, and law student alike all seem to agree: no one knows.

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<sup>112</sup> Kane, *supra* note 108.

<sup>113</sup> Larry Ribstein, *Larry Ribstein on the Future of Legal Education*, UNLOCKING THE LAW (Sept. 20, 2011), <http://truthonthemarket.com/2011/09/20/larry-ribstein-on-the-future-of-legal-education/>.

<sup>114</sup> Ribstein, *supra* note 106, at 1674; Anita Berstein, *Downturn Awareness in Class*, LEGAL ETHICS FORUM (Feb. 6, 2012), <http://www.legalethicsforum.com/blog/2012/02/downturn-awareness-in-class.html> (speculating whether the jobs will come back and offering ways to address the issue in the classroom).

#### IV. CHANGING THE FACE OF LEGAL EDUCATION

So, what is a law school to do? The media heavily criticized law schools for simply sticking their heads in the sand, ignoring the looming issues.<sup>115</sup> Calls for deregulation and new accreditation standards reverberate throughout the legal scholar community.<sup>116</sup> Committees formed to consider changes to traditional ethics rules, which could provide for more collaboration through multi-disciplinary practice and non-lawyer ownership of firms.<sup>117</sup> Reducing tuition, and limiting financial aid are also options to manage debt and the lawyer surplus. The effectiveness of these potential solutions is under debate, but the significant amount of time that will pass before any large-scale reform occurs, is not.

The vital question is what can be done now? What can be done immediately to better serve current and newly admitted law students as they move closer towards practice in today's legal market? Where should law schools focus their short-term educational goals?

##### a. Candor

The law school lawsuits stated a clear and resounding demand for greater transparency. Yet, the real issue is one of candor. The legal market changed and the changes are here to stay. The legal community has already begun an open and honest conversation about these changes. Law schools not only need to be frank about what awaits graduates, but also honest with themselves about changes they must make.<sup>118</sup> Law schools are hesitant to admit any

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<sup>115</sup> David Segal, *What They Don't Teach Law Students: Lawyering*, N.Y. TIMES, Nov. 19, 2011), at A1.

<sup>116</sup> Brent E. Newton, *The Ninety-Five Theses: Systematic Reforms in the American System of Legal Education and Licensure*, 64 S. C. L. REV. (forthcoming Fall 2012).

<sup>117</sup> James Podgers, *Ethics 20/20 Commission Seeks Input on Alternative Business Structures for Law Firms*, ABA JOURNAL (Apr. 5, 2011, 1:53 PM), [http://www.abajournal.com/news/article/ethics\\_20\\_20\\_commission\\_seeks\\_input\\_on\\_alternative\\_business\\_structures\\_for\\_/](http://www.abajournal.com/news/article/ethics_20_20_commission_seeks_input_on_alternative_business_structures_for_/).

<sup>118</sup> Paul Campos, *Do law faculty have an obligation to address the employment crisis in the classroom?*, LEGAL ETHICS FORUM (Feb. 6, 2012), <http://www.legalethicsforum.com/blog/2012/02/do-law-faculty-have-an-obligation-to-address-the-employment-crisis-in-the-classroom.html#more> (calling for a frank discussion by law faculty with students regarding employment and debt issues facing students); Lucy Jewel, *Rogierian Rhetoric and Law School Cred*, LEGAL ETHICS FORUM (Feb. 6, 2012), <http://www.legalethicsforum.com/blog/2012/02/rogerian-rhetoric-and->

shortcomings and schools are understandably defensive about the quality of the education they provide to students.

The problem, however, is not one of quality, but one of kind. Because of the changes in the legal services market, law schools are offering the wrong kind of education to students. The legal market evolved into more than just traditional legal services, and law schools must evolve to train more than just traditional lawyers. Law students, too, must recognize a traditional legal education and a big firm job are things of the past. Students must embrace these changes, and learn relevant skills that can serve them in a variety of legal service areas. Students should strive to create opportunity within the new legal market, and demand training through updated curriculum.

#### b. Updated Course Offerings

Changing curriculum is a regular occurrence in law schools. Courses are added and dropped based on student and faculty interest, and budget concerns. Law schools also change curriculum in response to criticism, such as the implementation of clinical programs to combat the failure of the legal education system to produce practice ready attorneys.<sup>119</sup> Making curriculum changes in response to a changing legal market to meet the needs of a new generation of lawyers should be no different.

Some law schools were ahead of the curve. Columbia Law School has offered a Lawyering in the Digital Age clinic for ten years.<sup>120</sup> Brigham Young University J. Reuben Clark Law School began a computer based practice systems project in 1979, which has evolved and

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law-school-cred.html#more (suggesting a Rogerian approach to the legal education crisis, where law schools began the conversation “with a full and lucid exposition of law school’s many negatives and risks”).

<sup>119</sup> Richard Lewis, *Clinical Legal Education Revisited* (Jan. 20, 2012), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1988997](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1988997).

<sup>120</sup> *Lawyering in the Digital Age Clinic*, COLUMBIA LAW SCHOOL, <http://www.law.columbia.edu/focusareas/clinics/digital> (last visited Apr. 8, 2012).

expanded over the years.<sup>121</sup> Many other law schools are beginning to respond to the current state of legal education.<sup>122</sup> Washington and Lee University School of Law implemented a new 3L curriculum.<sup>123</sup> Michigan State University College of Law added a new courses, as well as a study abroad program focused solely on law practice in the twenty-first century.<sup>124</sup> All other law schools should prepare to follow suit.

### i. *Technology Based Classes*

As discussed in Part III, technology is driving large-scale changes in the legal market. New graduates need to be able to navigate through the technology. Law firms are in various stages of transition. Some firms are completely paperless, while others are barely saving documents to a single database. Students need to be prepared to handle software programs designed to aid law practice management, client interactions, and electronic discovery. These course offerings should reach beyond software used within a law firm, and include software development training to produce other legal products and services.

### 1. Practice Management

Both students and law schools often overlook practice management.<sup>125</sup> Students dismiss the need for such a course because they do not intend to open their own law firm. Students then

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<sup>121</sup> Ron Staudt, *Learning Law by Building Software Applications*, NEW YORK LAW SCHOOL (Oct. 2010), [http://www.nyls.edu/centers/harlan\\_scholar\\_centers/institute\\_for\\_information\\_law\\_and\\_policy/events/future\\_ed/october\\_2010\\_proposals](http://www.nyls.edu/centers/harlan_scholar_centers/institute_for_information_law_and_policy/events/future_ed/october_2010_proposals); *Law School Curriculum Changes Aimed at Developing Marketable Graduates*, LEXISNEXIS (July 12, 2011, 12:20 PM), [http://www.lexisnexis.com/community/lexishub/blogs/law\\_school/archive/2011/07/12/law-school-curriculum-changes-aimed-at-developing-marketable-graduates.aspx](http://www.lexisnexis.com/community/lexishub/blogs/law_school/archive/2011/07/12/law-school-curriculum-changes-aimed-at-developing-marketable-graduates.aspx).

<sup>122</sup> Staudt, *supra* note 120; *Law School Curriculum Changes*, *supra* note 120.

<sup>123</sup> *Washington and Lee's New Third Year Reform*, WASHINGTON AND LEE UNIVERSITY SCHOOL OF LAW, <http://law.wlu.edu/thirdyear/> (last visited Apr. 8, 2012).

<sup>124</sup> *Quantitative Analysis for Lawyers*, MICHIGAN STATE UNIVERSITY COLLEGE OF LAW, [http://www.law.msu.edu/academics/course\\_desc.php?cid=455](http://www.law.msu.edu/academics/course_desc.php?cid=455) (last visited Apr. 8, 2012); *21<sup>st</sup> Century Law Practice Summer Program in London*, MICHIGAN STATE UNIVERSITY COLLEGE OF LAW, <http://www.law.msu.edu/london/> (last visited Apr. 8, 2012).

<sup>125</sup> With more and more graduates heading into solo practice directly from law school, practice management courses are growing even more important. See Martha Neil, *Difficult Job Market Not a Problem for 4 Law Grads Who Set Up Their Own Firm*, ABA JOURNAL (Apr. 5, 2012, 4:25 PM), [http://www.abajournal.com/news/article/difficult\\_job\\_market\\_not\\_a\\_problem\\_for\\_4\\_willamette\\_law\\_students\\_who\\_set\\_up/](http://www.abajournal.com/news/article/difficult_job_market_not_a_problem_for_4_willamette_law_students_who_set_up/).



leave law school unfamiliar with billing clients, collecting fees, organizing a manageable schedule, and electronic filing systems. Students should, at minimum, become familiar with billing software commonly used by firms. Perhaps not per se technologically based, students should also be able to determine which fee best fits a client's need, and how to collect on those fees in an ethical manner. More importantly, students should become familiar with scheduling software specific to attorneys that assist with planning a manageable workload. Using scheduling software in law school will hopefully begin a habit of good organization to avoid overbooking appointments, or missing deadlines.

## 2. Client Interactions

Client interactions are now frequently conducted through electronic mediums. E-mails and even text messages are changing client expectations with regard to the speed of legal advice, as well as the formality of the lawyer-client relationship. These means of communication can also be difficult to store in a useable and meaningful way. Students should become familiar with on-line web platforms that allow for sharing documents and messages with clients. Students should learn the features of these web platforms that best serve, or best frustrate, the user on the client end. Students should also learn the shortcomings of communication by electronic means. Regardless of the student's career plans, there will always be a client of some kind involved; developing strong communication skills, especially through electronic mediums, will be necessary to succeed in any job.

## 3. Electronic Discovery

E-discovery is a growing industry. Software programs of varying detail continue to develop, and certain companies, both in the U.S. and abroad, are solely dedicated to handling the

e-discovery needs of lawyers. The course description for Columbia Law School describes electronic discovery as:

The wealth of potential evidence contained in massive stores of e-mail, instant messages, electronic files of different types, database applications, and myriad other imaginable (and unimaginable) applications or media has engendered an ever-expanding jurisprudence in the field known as Electronic Discovery. The law has struggled to keep pace with the challenges electronic information presents for the legal process, including preservation and spoliation issues, rising costs, and questions of privilege waiver, privacy, and evidentiary admissibility. . .<sup>126</sup>

The course instructs students how to deal with clients in the digital age and the broader challenges of electronic information.<sup>127</sup> Courses on E-discovery should introduce software programs available. Students should also learn how to evaluate the particular strengths and shortcomings of the software programs or an e-discovery firm to ensure clients are receiving the best and most accurate services. Electronic discovery also extends beyond litigation. All areas of business, and other professions are buried in electronic information. Students on any legal career path should be prepared to work with and manage large amounts of data.

## ii. *Business Based Classes*

The traditional legal education also fails to educate lawyers on how to build and maintain a business.<sup>128</sup> With budding opportunities with technology and a demand for more product based legal products, law students need to graduate equipped to build a business and sell a product, whether in a traditional law firm or otherwise.<sup>129</sup> Lawyers have an absolute need to market their skills, build and maintain relationships, and create a profit-bearing practice.<sup>130</sup>

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<sup>126</sup> *L8161 Electronic Discovery*, COLUMBIA LAW SCHOOL, <http://www.law.columbia.edu/courses/L8161-electronic-discovery> (last visited Apr. 8, 2012).

<sup>127</sup> *L8161 Electronic Discovery*, *supra* note 126.

<sup>128</sup> Solo practice is so often overlooked that Solo Practice University developed to fill in the gaps between law school and practice. SOLO PRACTICE UNIVERSITY, <http://solopracticeuniversity.com/> (last visited Apr. 8, 2012).

<sup>129</sup> Ribstein, *supra* note 106, at 1663.

<sup>130</sup> Practice in this sense refers to the use of a legal education, as opposed to a traditional law practice.

Course offerings in this area vary greatly, with student attendance even more so. Some law schools already offer law practice management courses, designed to cover issues involved in managing a law firm.<sup>131</sup> However, few if any law schools offer courses designed to build other types of legal services business. Law schools should offer courses or encourage directed study programs so that students have an opportunity to develop legal services business models, computer applications with a legal focus, or other business plans related to serving the legal market.<sup>132</sup> Vermont Law School offers a course called Digital Drafting that teaches students to use computers to complete substantive legal work.<sup>133</sup> Subjects included document assembly, e-discovery, and business model and ethical implications, and students built basic programs to foster access to justice.<sup>134</sup>

Building business and alternative legal models are an important way for graduates to create their own jobs in today's changing markets.<sup>135</sup> Capstone courses, like those offered in other disciplines, would force students to take what they learn in the first two years of law school and roll it into a practical application.<sup>136</sup> These courses could be offered in a structured

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<sup>131</sup> E.g., *Law Practice Management*, MICHIGAN STATE UNIVERSITY COLLEGE OF LAW, [http://www.law.msu.edu/academics/course\\_desc.php?cid=106](http://www.law.msu.edu/academics/course_desc.php?cid=106) (last visited Apr. 8, 2012); *Applied Law and Practice Management*, SEATTLE UNIVERSITY SCHOOL OF LAW, [http://www.law.seattleu.edu/Academics/Curriculum/Course\\_Offerings.xml](http://www.law.seattleu.edu/Academics/Curriculum/Course_Offerings.xml) (last visited Apr. 8, 2012).

<sup>132</sup> For example, classes such as Legal R & D, and Supply Chain Management might be added to the curriculum to teach student entrepreneurial skills suitable in today's legal market. Professor Daniel Katz of Michigan State University College of Law proposed a revamped three-year curriculum suitable for a hypothetical MIT School of Law, which would include new classes such as Legal Information Engineering, Quantitative Methods, and Decision Science, as well as a two-part Capstone Project. Daniel M. Katz, *The MIT School of Law: A Perspective on Legal Education in the 21st Century [Presentation Slides Version 1.02]*, COMPUTATIONAL LEGAL STUDIES (Oct. 13, 2011), <http://computationallegalstudies.com/2011/10/13/the-mit-school-of-law-a-perspective-on-legal-education-in-the-21st-century-presentation-slides-version-1-01/>.

<sup>133</sup> *All VLS Classes*, VERMONT LAW SCHOOL, [http://www.vermontlaw.edu/academics/degrees/all\\_vls\\_courses.htm?faculty=x6606&category=](http://www.vermontlaw.edu/academics/degrees/all_vls_courses.htm?faculty=x6606&category=) (last visited Apr. 8, 2012).

<sup>134</sup> *All VLS Classes*, *supra* note 133.

<sup>135</sup> Joshua Kubicki, *Lawyers as Entrepreneurs: It is That Simple*, LEGAL TRANSFORMATION (Mar. 21, 2012, 12:33 PM), <http://www.legaltransformationblog.com/> (calling for business training as part of the legal education as a means to combat the waning traditional legal market).

<sup>136</sup> Lisa Kloppenberg et al, *A Time of Transition: The Need for Capstone Courses in American Legal Education*, NEW YORK LAW SCHOOL (Oct. 2010), [http://www.nyls.edu/centers/harlan\\_scholar\\_centers/institute\\_for\\_information\\_law\\_and\\_policy/events/future\\_ed/october\\_2010\\_proposals](http://www.nyls.edu/centers/harlan_scholar_centers/institute_for_information_law_and_policy/events/future_ed/october_2010_proposals).

traditional format, where students are given an issue traditional lawyers may face. Courses could also be self-designed, offering entrepreneurial students a chance to develop products or business structures designed to improve the delivery of legal services. The output from these Capstone courses should serve as a stepping-stone for students to create their own job opportunities.

### iii. *Globally Focused Classes*

With the world growing smaller through technology, students should have more interaction with the global legal world.<sup>137</sup> Most law schools offer comparative law classes covering various areas of law, but most students do not yet understand the need to enroll in these classes. Requiring students to take some form of comparative or foreign law class would provide a basic understanding to use in practice.

Courses should also be offered to compare the legal structures and regulations of foreign countries with the U.S. model. Because of the significant changes in the U.K. and Australia, U.S. students would benefit from understanding the pros and cons of those changes, and evaluating their effectiveness in practice. A component of this course could be weighing policy decisions, and offering students a supported forum to draft legislative reform to ensure American lawyers have the freedom to best serve clients in order to remain competitive in the global market.

### c. *Redesigned Clinical Studies*

Clinical programs serve dual needs: training practice ready lawyers and filling unmet legal services needs. Despite the changes in the legal market, law school clinics can still meet these needs. Both a simple addition to current programs, as well as development of additional clinics based on the modern legal market, will serve to bring current legal education more in line with market demands.

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<sup>137</sup> See MORGAN, *supra* note 1, at 212-13 (advocating for students to take more detailed courses on foreign law, in addition to domestic studies).

Current clinical programs should include the use of software programs students may encounter in post-graduation practice. Client communication web platforms, contract drafting programs, and even billing software to log hours worked. Students will not only leave ready to use software programs in practice, but will also have an opportunity to test different programs to filter out the best sources of software to build an efficient practice. Students should be encouraged to research different software programs that may better serve the clients.

Additional clinical programs designed to incorporate modern technology should also be implemented. Students should be able to design and build applications or software programs that would benefit either a lawyer's delivery of, or a client's access to legal services. Columbia Law School already offers Lawyering in the Digital Age, a ten-year old clinic aimed at integrating technology to better serve communities in need. Students create web-platforms and software programs as part of this clinic.

A group of legal educators and technologists recently proposed Apps for Justice, a modern legal clinic focused on designing applications for use on statewide legal aid websites.<sup>138</sup> While the software developed in these clinics would be designed to serve low-income clients, the skills students learn would be helpful in other practice settings, including fee-based services for moderate income clients or cost conscious corporate clients.<sup>139</sup> This proposal won the FutureEd contest hosted by New York Law School, which encouraged the submission of innovative ideas to expand legal education.<sup>140</sup>

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<sup>138</sup> Raun Staudt and Mark Lauritsen, *Apps for Justice: Learning Law by Creating Software*, NEW YORK LAW SCHOOL (Apr. 2011), [http://www.nyls.edu/centers/harlan\\_scholar\\_centers/institute\\_for\\_information\\_law\\_and\\_policy/events/future\\_ed/fe3\\_proposals](http://www.nyls.edu/centers/harlan_scholar_centers/institute_for_information_law_and_policy/events/future_ed/fe3_proposals).

<sup>139</sup> Staudt & Lauritsen, *supra* note 138.

<sup>140</sup> *Apps 4 Justice Wins Future Ed Contest*, IIT CHICAGO-KENT COLLEGE OF LAW (Apr. 20, 2011), <http://www.kentlaw.iit.edu/news/2011/apps-for-justice-wins-future-ed-contest>.

#### d. Admissions to Specialty Tracks

Even if law schools increase relevant course offering and innovative clinical programs, there is no guarantee enough students will actually enroll in these new courses. If student exceptionalism persists, the incentive to take the market driven classes may be missing. In addition, despite the staggering statistics detailing the lawyer surplus, law schools are unlikely to admit fewer students. Applications may go down as students fail to see value in the education, but because schools need to admit students to stay in business, the lawyer surplus is not likely to correct itself.

One way to slow the growing surplus and guarantee students will take modern course offerings is to admit students to specialized program tracks. If the future is in legal software development, regulatory changes, or global studies, students should be admitted to law school to focus on these areas.<sup>141</sup> New York Law School already offers a Certificate of Mastery of Law Practice Technology, and a Law Practice Technology Job Track, both of which challenge students to build software programs to better provide legal services.<sup>142</sup> Law schools used to offer more certificate programs. However, as the market began to change, schools encouraged students to obtain a more general education to prepare for a job in whatever area they could. As a result, law school graduates have a little bit of knowledge about a variety of things, but no real marketable specialty.

Specialized program tracks should not replace all law school admissions. Law schools should allocate a certain number of admissions to general study commensurate with the reduced

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<sup>141</sup> MORGAN, *supra* note 1, at 211-12 (advocating for practice concentrations); *see also* Richard A. Matasar, *The Rise and Fall of American Legal Education*, 49 N.Y.L. SCH. L. REV. 465 (2004).

<sup>142</sup> *Certificate*, NEW YORK LAW SCHOOL, [http://www.nyls.edu/centers/harlan\\_scholar\\_centers/institute\\_for\\_information\\_law\\_and\\_policy/certificate/](http://www.nyls.edu/centers/harlan_scholar_centers/institute_for_information_law_and_policy/certificate/) (last visited Apr. 8, 2012); *Certificate/Special Programs*, NEW YORK LAW SCHOOL, [http://www.nyls.edu/prospective\\_students/joint\\_degrees/specialized\\_programs/certificate/special\\_programs](http://www.nyls.edu/prospective_students/joint_degrees/specialized_programs/certificate/special_programs) (last visited Apr. 8, 2012).

demand for traditional lawyers. Schools should then focus on specialty admissions. These tracks could focus on: transactional business,<sup>143</sup> software development,<sup>144</sup> policy, global studies, or legal services as products. The specialty tracks should still include foundational legal courses, but to the extent possible, teach those core principles within the bounds of the particular specialty.

e. A Return to Mentorship

After moving away from the apprenticeship model of legal education, law schools merely provided education, leaving firms to train new associates. After complaints that students were not practice ready, clinics cropped up to correct the issue. Clinical professors now act as mentors to students, taking on a role similar to the older apprenticeship style of learning. Seeing the importance of strong practical training, Washington & Lee University recently introduced a new third year curriculum, which ensures its students graduate with valuable experience. Other law schools should follow suit.

However, mentorship should extend beyond traditional legal jobs. Using the Washington & Lee concept as a starting point, law schools should offer a practical third year curriculum in a variety of areas. Students could work with lawmakers, computer programmers, or traditional lawyers and then leave school with more marketable skills. Interaction with professionals outside the legal realm would also prepare students for the reality of interactions post-graduation.

Collaboration will only serve to strengthen legal education.<sup>145</sup> In 2011, Northeastern University School of Law (“NESL”) began collaborating with the College of Business

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<sup>143</sup> Another proposal out of the FutureEd contest focused on certificate programs in different transactional skill sets. Tina L. Stark and Eric C. Chaffee, *A Transactional Skills Curriculum for a New Century*, NEW YORK LAW SCHOOL (Apr. 2011), [http://www.nyls.edu/centers/harlan\\_scholar\\_centers/institute\\_for\\_information\\_law\\_and\\_policy/events/future\\_ed/fe3\\_proposals](http://www.nyls.edu/centers/harlan_scholar_centers/institute_for_information_law_and_policy/events/future_ed/fe3_proposals).

<sup>144</sup> Katz, *supra* note 132.

<sup>145</sup> See Ribstein, *supra* note 112 (discussing collaboration across disciplines, including specific collaboration with computer engineers to develop technology and complete predictive analysis).

Administration in order to foster relationships between disciplines lawyers are likely to encounter in practice.<sup>146</sup> NESL also partners with Bouve College of Health Sciences, College of Criminal Justice, and School of Public Policy and Urban Affairs to provide law students with broader research opportunities<sup>147</sup> and opportunities to develop legal skills better suited for individual markets. Collaboration should include in person contact as well as virtual conferences to connect law schools with the local community, national corporations, and global business.<sup>148</sup>

#### f. Problems with Short-Term Changes

The changes proposed can be implemented directly by the law school, and within the bounds of current ABA regulations. This does not make the changes simple or easy. Money, trained faculty, and risk all pose a problem to making these changes.

Changing curriculum, or clinical programs will require money. Schools facing reduced admissions will feel the effects of a tight budget before they even have a chance to consider changes to curriculum. Technology, both hardware and software, is not cheap, especially if required in amount sufficient to meet a medium sized classroom of students.<sup>149</sup> Faculty will be required to bring their skills up to date and schools will likely need to hire new faculty with experience in the developing legal fields. How then will law schools manage these changes absent increases in tuition rates that are already shockingly high?

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<sup>146</sup> Emily Spieler, *Building Professional Collaborations: A Law-Business-Employer Team Model at Northeastern University School of Law*, NEW YORK LAW SCHOOL (Oct. 2010), [http://www.nyls.edu/centers/harlan\\_scholar\\_centers/institute\\_for\\_information\\_law\\_and\\_policy/events/future\\_ed/october\\_2010\\_proposals](http://www.nyls.edu/centers/harlan_scholar_centers/institute_for_information_law_and_policy/events/future_ed/october_2010_proposals).

<sup>147</sup> *Strategic Plan*, NORTHEASTERN UNIVERSITY SCHOOL OF LAW, [www.northeastern.edu/law/pdfs/news/strategic-plan.pdf](http://www.northeastern.edu/law/pdfs/news/strategic-plan.pdf).

<sup>148</sup> Barbara L. Bernier, *The Millenium Law School: Building Technology and Innovation into the Legal Education Framework*, NEW YORK LAW SCHOOL (Oct. 2010), [http://www.nyls.edu/centers/harlan\\_scholar\\_centers/institute\\_for\\_information\\_law\\_and\\_policy/events/future\\_ed/october\\_2010\\_proposals](http://www.nyls.edu/centers/harlan_scholar_centers/institute_for_information_law_and_policy/events/future_ed/october_2010_proposals).

<sup>149</sup> Software programs may not pose such a large cost issue. Providers, Lexis Nexis, for example, are often willing to let students use their resources for free for educational purposes in hopes of acquiring students' business after graduation.



Law schools should also be concerned about whether students would be receptive to these types of changes. Will students be willing to commit to a specialty? Will students take the new courses? Students will have no choice. With the changes in the market, students will need to adapt if they want to practice law. During admission visits and recruiting, law schools will need to be frank with students about the changes in the legal landscape. The conversation needs to include more than a discussion about the bad job market, and job search strategies. The conversation needs to reset expectations about what jobs will exist, and should exist for a twenty-first century lawyer. A candid – and ongoing – discussion about the skills and the attitudes students will need is essential.

Law schools will need to consider whether an investment in improving curriculum now will produce a profitable return in the long run, even if it results in profit loss in the short-term.<sup>150</sup> Law schools previously absorbed the cost of a changing market by developing clinical training programs when law firms were no longer willing to take on the cost of training new lawyers. Now, with the down economy and changes within the legal market, costly change is needed again. This type of expensive up front risk in hopes of long-term gain is exactly the risk law schools ask students to take. With the dire situation graduates are now facing, it is long past time for law schools to take that same risk.

## V. CONCLUSION

The recent law school lawsuits exploded issues with the legal education system. While transparency would be helpful, it will not solve the challenges facing new lawyers in today's

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<sup>150</sup> The University of New Hampshire already implemented simulation programs as part of the first year curriculum intended to provide students with an understanding of the lawyering process. *Fundamentals of Law Practice*, UNIVERSITY OF NEW HAMPSHIRE SCHOOL OF LAW, <http://law.unh.edu/coursedescriptions/coursedescriptions.php?SRMasterID=413> (last visited Apr. 22, 2012). Despite the expense of the program, the courses have produced students who have experience using analytical skills and ethical judgment that is valuable to firms who may not be able to expend resources to train new lawyers. Mitchell Simon, *The Difficult Choices of Tuition Dependant Schools*, LEGAL ETHICS FORUM (Feb. 6, 2012), <http://www.legalethicsforum.com/blog/2012/02/the-difficult-choices-of-tuition-dependent-schools.html>.

market. Market demands and technology eradicated many traditional legal jobs. Global interactions drive a need for lawyers equipped to handle issues of international law. Technology changed how legal work gets done, and builds an expectation of quality service, fast and cheap. Law schools need to react to these changes.

Experts within the legal community are calling for broad reform. Proposals include deregulation of law schools, and a loosening of professional ethics rules. Whether these changes will provide a workable solution remains to be seen, as changes of this magnitude take time, if they happen at all.

Law students need help now. Law schools need to make immediate changes. Current programs are producing lawyers without jobs, trained to do work in a market that no longer exists. Immediate changes should be made to current law school curriculum. These changes should include individual course offerings to improve students' familiarity with new legal software, international law, and the entrepreneurial nature of law practice. Schools should also weave technology into clinics and encourage students to build legal products to serve a variety of practice needs. Law school specialty track programs should be used to keep students on track to be trained for practice in the changing legal market.

These changes should be implemented immediately. Law schools need to provide a relevant education if they have any hope of continuing as an institution. The legal market has changed, and graduates must be prepared to offer valuable and necessary legal services within that market.